

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

JOSE MARIA HERRERA,

Respondent.

Supreme Court Case
No.

The Florida Bar File
No. 2014-70,056 (11G)

_____ /

COMPLAINT

The Florida Bar, complainant, files this Complaint against Jose Maria Herrera, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is, and at all times mentioned in the complaint was, a member of The Florida Bar, admitted on October 16, 1986 and is subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent practiced law in Miami-Dade County, Florida, at all times material.
3. The Eleventh Judicial Circuit Grievance Committee “G” found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

RECEIVED, 07/21/2016 01:18:33 PM, Clerk, Supreme Court

4. This matter arises from Respondent's misconduct in the matter of *Bermudez v. Bert*, Circuit Court Case No. 2000-25777, in which he served as successor counsel to the defendant in that law suit.

5. In this matter, Respondent engaged in improper and abusive litigation tactics, including: raising frivolous claims; colluding with his adversaries to present false allegations against Guy Lewis and Michael Tein (hereinafter "Lewis" and "Tein"), and/or their law firm Lewis Tein, PL (hereinafter "Lewis Tein" or the "firm"), despite being in possession of the evidence proving his allegations false; failing to comply with discovery requests; withholding and/or concealing evidence; and seeking to file in the underlying case irrelevant and highly prejudicial personal details regarding the attorney representing Lewis and Tein. In taking these actions, Respondent acted in concert with Mr. Bernard Roman, whose misconduct is described in the Complaint filed in *The Florida Bar v. Roman*, The Florida Bar File Nos. 2014-70,055(11G) and 2015-70,460(11G).

6. This matter began during post-judgment litigation in the case of *Bermudez v. Bert*. This case was a wrongful death action involving the tragic deaths of two individuals at the hands of a drunk driver, Ms. Tammy Gwen Billie. Ms. Billie and her father, whose car she was driving, are members of the

Miccosukee Tribe of Indians (hereinafter referred to as the Tribe). Lewis and Tein represented Billie and Bert in the underlying civil action.¹

7. The plaintiffs in the underlying civil action were represented by Ramon Rodriguez. Rodriguez obtained a judgment for approximately \$2,900,000.00 against Billie and her father. Extensive post trial litigation ensued in their attempts to collect same. Because the tribal members did not have sufficient funds to pay the judgment, Rodriguez attempted to collect the judgment from the Tribe itself.

8. During these drawn out and contentious post-judgement proceedings, Rodriguez filed over twenty motions for sanctions against Lewis Tein. None of these were granted, with the exception of the twenty-first motion, although several motions for sanctions were granted against Rodriguez. The twenty-first motion for sanctions was based on Lewis and Tein's objection to production of certain tax documents. The court found that Lewis and Tein did not make clear in its response objecting to the request that there were actually no responsive documents available, and accordingly sanctioned Lewis Tein \$3,500.00 for the attorney's costs in litigating that objection.²

¹ Lewis and Tein also represented other members of the Tribe, as well as the Tribe itself in various capacities between 2005 and 2010.

² This amount was later increased at a subsequent hearing on an unrelated issue, although no new evidence had been taken as to the discovery violation.

9. During the course of the hearing on the above referenced motion for sanctions, Tein made a statement indicating that the Defendants (Billie and Bert) were responsible for their attorney's fees in the lawsuit.

10. Upon learning of this statement Bernardo Roman, III (hereinafter "Roman), who was hired to represent the Tribe under the Tribe's newly elected leadership, contacted Rodriguez and provided Rodriguez with 61 checks showing payments of attorney fees to Lewis and Tein by the Tribe in the Billie/Bert and other matters. Roman did this despite the fact that it provided an avenue for the plaintiff to pursue collection on the judgment from the Tribe itself, instead of solely from the defendants. Indeed, as a result of this action Rodriguez obtained a \$7,000,000.00 judgement against the Tribe.³

11. Each court that has examined this issue has determined that Roman's actions resulted from the bad blood, or personal animosity, held by Roman and the new tribal leadership against the former tribal administration and its associates, including Lewis and Tein. Judge Dresnick stated, "because of bad blood the Tribe did whatever it could to hurt Lewis & Tein. And part of what they did was they dropped this gift on your [Rodriguez's] doorstep of cancelled checks, which you never would have known about but for bad blood between Lewis & Tein and the

³ This judgment was overturned on appeal.

Tribe. So – they gave you that gift because they wanted to use you to hurt Lewis & Tein. Which you did.”

12. These 61 checks sparked an additional two years of litigation, in which Rodriguez, aided and abetted by Roman and Respondent Herrera, pursued sanctions against Lewis and Tein for perjury and fraud on the court. Lewis and Tein continuously maintained that Tein’s statement was true, and the defendants were responsible for their fees. The checks from the tribe were the result of the Tribe loaning, or “fronting,” funds to the defendants Billie and Bert, which funds were being paid back to the Tribe through reductions in the defendants’ quarterly disbursements of Tribal funds. Accordingly, it was in fact the defendants who were ultimately responsible for paying the attorneys’ fees.

13. Upon order of the trial court, Roman filed an affidavit in the action which purported to inform the court as to whether there were any records of tribal loans to the defendants Billie and Bert for attorney’s fees in this case. Rather than provide documents responsive to the court’s inquiry, Roman filed a false affidavit indicating that there were no loan documents or other records of the Tribe which would indicate the checks paid by the Tribe to Lewis and Tein were loans to the defendants Billie and Bert for legal fees.

14. However, at all times material to this action, Roman was in possession of numerous documents which refuted the statements in his affidavit, and which would have provided a truthful, or non-misleading, response to the court.

15. Respondent Herrera, a colleague of Roman, who also represented the Tribe from time to time on various matters, admitted to the Bar that he was not only aware of, but also had possession of, at least some of the same Tribal documents which refuted Roman's allegations concerning Lewis and Tein's alleged perjury.

16. Notwithstanding same, Respondent Herrera actively aided and abetted Roman's campaign to vilify Lewis and Tein in the courts, and directly participated in perpetrating Roman's fraud on the court. He met in secret with both Roman and Rodriguez regarding these allegations. Also, in an effort to develop "evidence" to prove Roman's assertions, Respondent Herrera took multiple sworn statements from his client. Roman was present for some of these statements.

17. In the third such sworn statement, the client directly contradicted Roman's assertions, and verified that he was indeed responsible for Lewis and Tein's fees, as the Tribe was deducting monies from his quarterly disbursements to pay those fees.

18. It is notable that, while Respondent Herrera attached the client's sworn statements which supported Roman's position to pleadings he filed in the

court, by contrast after taking the third sworn statement which directly contradicted Roman's assertions concerning Lewis and Tein, he did not file that sworn statement anywhere. Indeed, he concealed that statement from the court, from Rodriguez, from Lewis and Tein and their counsel, Mr. Paul Calli, and also from the Bar.

19. Despite his client's statements in the third sworn statement, and despite his admitted possession of the Tribal documents proving that deductions were in fact being taken from his client's quarterly disbursements to pay Lewis and Tein's legal fees, Respondent Herrera filed a "Time Line by Jimmie Bert" in which he asserted that The Tribe, and not his client, was paying Lewis and Tein's fees. Respondent quoted liberally from the first and second sworn statements of his client, but not at all from the third statement, which directly refuted that contention. Indeed, he did not mention that he had even taken an additional statement.

20. When the existence of the third statement came to light, Respondent Herrera continuously objected to all attempts by Lewis and Tein to gain access to same in discovery. He did not produce it until the court ordered him to do so. He

also refused to produce the statement to the Bar upon request, although he did give the Bar the first two sworn statements.⁴

21. Following the two years of litigation sparked by Roman and Rodriguez's allegations of perjury against Lewis and Tein, and after the close of the evidence at the evidentiary hearing on that issue, Rodriguez withdrew the perjury allegation. Notwithstanding same, the trial court made the specific finding that Lewis and Tein did not commit perjury or fraud and did not engage in a lack of candor to the court.

22. In addition to the above, Respondent engaged in further misconduct in the related case before Judge Thornton, when he asked the court to take judicial notice of the court file containing the dissolution of marriage action of the attorney representing Lewis and Tein. Counsel's divorce, which took place nine years prior, had no relevance to any issue pending before Judge Thornton. The request was not made for any legitimate legal purpose, and instead had the effect of burdening, harassing or intimidating the litigants and their counsel. Respondent himself admitted to the Bar that his actions in this regard were improper.

⁴ Around the same time that he filed the Time Line, Respondent took yet another sworn statement from his client, this time asking only leading questions, and getting his client to contradict what he had said in his Third sworn statement. Respondent did not provide either the third or fourth sworn statements to Lewis and Tein, or the court, and did not provide either statement to the Bar. The Bar obtained the third and fourth sworn statements from Lewis and Tein.

23. By reason of the foregoing, Respondent has violated the following Rules Regulating The Florida Bar: Rule 4-3.1 (Meritorious Claims and Contentions); Rule 4-3.3 (Candor Toward the Tribunal); 4-3.4 (Fairness to Opposing Party and Counsel); 4-8.1 (Maintaining the Integrity of the Profession; Bar Admission and Disciplinary Matters); 4-8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and 4-8.4(d) (A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice) of the Rules Regulating The Florida Bar.

WHEREFORE, The Florida Bar prays Respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.



Jennifer R. Falcone, Bar Counsel
The Florida Bar
Miami Branch Office
444 Brickell Avenue
Rivergate Plaza, Suite M-100
Miami, Florida 33131-2404
(305) 377-4445
Florida Bar No. 624284
jfalcone@flabar.org

Adria E. Quintela

Adria E. Quintela, Staff Counsel
The Florida Bar
Lakeshore Plaza II, Suite 130
1300 Concord Terrace
Sunrise, Florida 33323
(954) 835-0233
Florida Bar No. 897000
aquintel@flabar.org

CERTIFICATE OF SERVICE

I certify that this document has been Efiled with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida; with a copy provided via email to Herman Joseph Russomanno and Herman J. Russomanno, III, Attorneys for Respondent, at hrussomanno@russomanno.com and herman2@russomanno.com using the Efiling Portal, and that a copy has been furnished by United States Mail via certified mail No. 7016 0750 0000 3623 6419, return receipt requested to Herman Joseph Russomanno and Herman J. Russomanno, III, Attorneys for Respondent, whose record bar address is 150 West Flagler Street, Suite 2800, Miami, Florida 33130; and via email to Jennifer R. Falcone, Bar Counsel, at jfalcone@flabar.org, on this 21st day of July, 2016.

Adria E. Quintela

Adria E. Quintela, Staff Counsel

**NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY
EMAIL ADDRESS**

PLEASE TAKE NOTICE that the trial counsel in this matter is Jennifer R Falcone, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Miami Branch Office, 444 Brickell Avenue, Rivergate Plaza, Suite M-100, Miami, Florida 33131-2404, (305) 377-4445 and jfalcone@flabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323, aquintel@flabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES OF DISCIPLINE, EFFECTIVE MAY 20, 2004,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.